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October 27, 1997

FILED

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MISSOURI
PUBLIC SERVICE COMMISSION

Mr. Cecil I. Wright
Executive Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

Re: Case No. TW-97-333

Dear Mr. Wright:

Enclosed for filing in the above-referenced matter, please find an original and fourteen (14) copies of an Application for Rehearing of the Small Telephone Company Group.

Please see that this letter is brought to the attention of the appropriate Commission personnel. Copies of the foregoing document are being provided this date to parties of record.

If there are any questions regarding this filing, please direct them to the undersigned. I thank you in advance for your cooperation in this matter.

Sincerely,

Sondra Morgan

Sondra B. Morgan

SBM/da
Enclosures
cc: Parties of Record

98.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation into the Provision of Community Optional Calling Service in the State of Missouri.	)))	CASE NO. TW-97-333

APPLICATION FOR REHEARING

Introduction

Comes now the Small Telephone Company Group (STCG) and for its Application for Rehearing of the Missouri Public Service Commission's (Commission) Report and Order issued October 16, 1997, states to the Commission that said Report and Order is unlawful, unreasonable and unsupported by competent and substantial evidence in the following respects:

1. The Commission has used an unauthorized and unlawful procedure in issuing its Report and Order

At page 4 of its Report and Order, the Commission states as follows:

> "In an exercise of its quasi-legislative power to establishing working groups and inquire into policy matters, the Commission created a working case ("W") designation in February of this year. Cases opened under this designation are distinguished from contested cases which review the rights of any individual, group or particular company and do not require traditional procedures. The Commission may establish a "W" case to review and develop policy. TW-97-333 was the first case to be opened in this case category."

The Commission's Report and Order fails to cite any statutory or other authority for this procedure and, in fact, none exists. The Commission is a creature of statute and only has those powers specifically enumerated or reasonably inferred. State ex rel Missouri Cable Telecommunications Association, et al. v. Missouri Public Service Commission, 929 S.W.2d 768, 772 (Mo. App. 1996). See also, State ex rel. Utility Consumers Council v. Public Service

Commission, 585 S.W.2d 41, 49 (Mo banc 1979). More importantly, the Commission is simply wrong that the instant proceeding is not a "contested case" in which the rights of any individual, group or particular company will be affected. By eliminating Community Optional Service (COS), the Commission has substantially and adversely affected the rights of at least 17,000 individuals who currently subscribe to this service as well as the tens of thousands of other subscribers who benefit from the return calling feature of this service by being located in "target COS" exchanges. In addition to the substantial impact the elimination of COS will have on the rates and quality of telecommunications service of existing COS customers, the Commission's decision also creates substantial shifts of revenue and expense between companies who participate in the provision of this service. Consequently, to the extent the Commission utilized this "new procedure" in arriving at its decision, and thus failing to make sufficient findings of fact based on the record evidence, such procedure is unlawful.

2. The Commission's interpretation of the Telecommunications Act of 1996 and Senate Bill 507 is incomplete and erroneous.

At page 8 of its Report and Order, the Commission states as follows:

> COS must be closely reevaluated in light of the Telecommunications Act and Missouri's Senate Bill 507. The purpose of the Act was to provide for a pro-competitive national framework to accelerate deployment of advanced telecommunications and information technologies and services to all Americans.

At pages 16 and 17 of its Report and Order, the Commission further concluded:

> Senate Bill 507 as enacted at Section 392.185 provides that the provisions of this chapter shall be construed to, *inter alia*, "allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest.

It is clear from the Commission's Report and Order that its decision to eliminate COS was based on

its belief that the "pro-competitive" purposes of the Telecommunications Act of 1996 and Senate Bill 507 (SB 507) required it to do so. However, the Commission's Report and Order failed to acknowledge the other competing purposes of the Act and SB 507 which are to preserve universal services and maintain parity of services and rates between urban and rural areas. 47 U.S.C. § 254(b)(3) provides:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Similarly, § 392.185, RSMo. 1996 Supp., states that "provisions of this chapter shall be construed to: (1) Promote universally available and widely affordable telecommunication service; . . . (7) Promote parity of urban and rural telecommunication services[.]"

The Commission neglects to address these concerns and, more importantly, fails to find how the elimination of COS will not adversely affect universally available and widely affordable telecommunication services and parity of urban and rural telecommunication services. Accordingly, the Commission's analysis of and apparent reliance on the Act and SB 507 is erroneous and misplaced.

3. <u>The Commission's findings of fact are unreasonable and unsupported by competent and substantial evidence on the record.</u>

At page 11 of its Report and Order, the Commission found that "one-way COS allows only for calls from petitioning exchanges to target exchanges to be placed toll-free. As such, it duplicates present OCA and MCA services." At page 12, the Commission further finds that "telecommunication customers throughout Missouri now have a variety of choices including

OCA and MCA plans for reducing the costs of extended area calling." These findings are erroneous and unsupported by the record evidence in this case. The Metropolitan Calling Area (MCA) and Outstate Calling Area (OCA) plans, as well as modified existing COS, were first established by this Commission in Case No. TO-92-306. In that case, the Commission retained two-way COS as a premium service stating that "[t]wo-way flat rate calling between exchanges is a service which, in addition to OCA, will provide the full range of services to outstate exchanges." Expanded calling scopes 2 MoPSC 3rd 1, 28 (1992) (emphasis added). The Commission noted two reasons for retaining COS. In addition to OCA, "[c]ommunities of interest may exist or may develop which are beyond the 23-mile limitation of OCA and a service should be available in those instances." Id. Second, "there may be instances where communities of interests are so substantial that two-way calling may more adequately address customer's desire than does the one-way reciprocal service of OCA." Id. Nor is MCA service a viable option to COS. Although MCA is available to a large number of customers in the three metropolitan areas, it is not available to customers living in the outstate, rural areas. MCA and OCA were designed to complement COS and provide a comprehensive statewide answer to the problems associated with rural calling scopes. Eliminating one-half of the two part solution for outstate Missouri (i.e., OCA and COS) will leave customers in these exchanges without the "full range of services" envisioned by the Commission in Case No. TO-92-306.

At page 12 of the Report and Order, the Commission goes on to find that:

> "Various competitive entities as well as schools and libraries provide low-cost or no-cost internet or electronic mail service as an alternative communication network which was unanticipated and unthinkable when COS was initiated. Discounted calling cards are now widely available making it possible, for example, for students at school to call to their parents' home or work place in a

more convenient and affordable manner. Cellular service now offers toll-free calling which not only crosses community boundaries but county and local access transport areas (LATA) boundaries as well. Increasingly competitive pricing in the cellular market offers a new choice for many telecommunications customers."

This finding is completely unsupported by any record evidence in the instant case. There was no evidence in this case as to the capability of schools and libraries to provide low-cost or no-cost internet or electronic mail service; no evidence with respect to discounted calling cards (which, in fact, are often not discounted substantially, particularly for the short distance routes represented by COS calling) and, similarly, no evidence with respect to cellular services. Thus, to the extent the Commission relies on this information in finding that telecommunication customers throughout Missouri now have a variety of choices for reducing the cost of extended area calling such reliance is simply unsupported by any competent and substantial evidence upon the record. In fact, the record evidence indicates that alternative services currently available from competitive carriers are not comparable either in terms of scope (i.e., two-way service) or rates. Furthermore, the uncontroverted evidence demonstrates that OCA is not an attractive alternative to COS primarily because it is likely to be more expensive. If COS customers making an average amount of calling per month (i.e., 7.75 hours) were required to pay OCA rates for the same amount of calling, they would experience an increase in their rates ranging from 77% to 303% under the OCA two-hour plan (depending on time of day and distance of the call). Under the OCA five-hour plan, a residential customer would experience an approximate 109% increase. (See Late-Filed Exh. No. 40) In addition, OCA also lacks the certainty of a flat rate plan and the capability for return calling to the petitioning exchange, both of which are a high priority for COS customers. Accordingly, the record is clear that telecommunications customers throughout

Missouri do not now have a variety of choices for reducing the cost of extended area calling.

At page 14 of the Commission's Report and Order, the Commission finds that "mandatory COS is inconsistent with the current competitive environment and acts as a barrier to entry for new CLECs." Again, there is absolutely no evidence in this record that would indicate that COS is a barrier to entry of new CLECs. First, COS is a toll service and, as this Commission has found, "is not necessary for the provision of local telecommunications service." (Report and Order, p. 14) Thus, the ability or inability to provide COS has no bearing on a CLECs' ability to provide basic local telecommunication service. Even if a CLEC wants to get in the toll business and provide a "COS-like" service, it can purchase COS from the existing primary toll carrier and resell it to the CLEC's customers. (No party in this case contends that COS cannot be resold.) Consequently, a new CLEC, to the extent it wants to provide COS, can do so through resale and will thus not be prohibited from providing this service. Again, to the extent the Commission's decision to eliminate COS is based upon the finding that it acts as a barrier for entry to new CLECs, such finding is without record evidence.

4. The Commission's decision fails to address the shift in expenses and revenues between incumbent local exchange carriers.

The Commission's Report and Order makes much of the fact that COS is a below cost service, citing as an example the fact that SWBT receives COS revenues of $1.6 million while incurring costs of $6.9 million to provide COS. (Report and Order, p. 14) By eliminating COS, the Commission has eliminated this "loss" for SWBT (and presumably other PTCs). However, it must be remembered that the PTCs were allowed to increase other rates at the time COS and OCA were implemented in order to maintain revenue neutrality. The Commission's Report and

Order fails to address what further action must be taken in order to "undo" these revenue neutral rate increases implemented at the time that modified COS was initiated. Similarly, many secondary carriers reduced their intrastate access rates to reflect the stimulated calling created by COS (through the "true-up" process). Now that COS has been eliminated, that "stimulated" calling will be eliminated and secondary carriers should be allowed to return to their "pre COS" access rates or to otherwise adjust their rates to remain revenue neutral. Such corrective action is necessary to put the companies and their customers back in the position they were in prior to implementation of modified COS.

WHEREFORE, in light of the foregoing, the STCG respectfully requests the Commission to issue its order granting rehearing in the above-referenced matter and for such other orders as are appropriate on the circumstances.

Respectfully submitted,

Sondra B. Morgan

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was either hand-delivered or sent via U.S. mail, this 27th day of October, 1997, to:

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